

No. 15231

**United States
Court of Appeals**
for the Ninth Circuit

CITY OF ANCHORAGE, a Municipal Corpora-
tion,

Appellant.

vs.

CHUGACH ELECTRIC ASSOCIATION, INC.,

Appellee.

Transcript of Record

**Appeal from the District Court
for the District of Alaska,
Third Division**

FILED

NOV 14 1956

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VS.

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Appellee.

Transcript of Record

**Appeal from the District Court
for the District of Alaska,
Third Division**

ATTORNEYS OF RECORD

JAMES M. FITZGERALD,
City Hall,
Anchorage, Alaska,
Attorney for Appellant,
City of Anchorage.

EDGAR PAUL BOYKO,
Turnagain Arms, 523 3rd Ave.,
Anchorage, Alaska,
Attorney for Appellees.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory
of Alaska, Third Division

In the Matter of

THE DELINQUENT TAX ROLL FOR THE
CITY OF ANCHORAGE FOR THE YEAR
1954

No. A-10,396

SUPPLEMENTAL PETITION FOR
JUDGMENT AND ORDER OF SALE

The Petitioner, City of Anchorage, a municipal corporation, respectfully shows:

1. That the City of Anchorage is a municipal corporation duly organized and existing under and by virtue of the laws of the United States and Territory of Alaska and is situate within the Third Judicial Division of said Territory.

2. That during the year 1953, and prior thereto, pursuant to the provisions of Article 5, Chapter 8, Anchorage General Code, as amended, and the laws of the Territory of Alaska, as amended, the duly and regularly appointed, qualified and acting assessor of said city made up an assessment roll of property within the corporate boundaries of said city subject to taxation for municipal purposes; that said roll was duly and regularly equalized by the City Council of said city as provided by the applicable laws, ordinances and amendments thereof and thereto; that thereafter the said City Council according to law, fixed the rate of tax levy for the

year 1954 at twenty (20) mills upon each dollar of taxable property for the said tax year, namely, the calendar year of 1954.

3. That all unpaid taxes upon real and personal property in said city during the year 1954 so assessed and equalized became delinquent either at five o'clock p.m., February 15, 1954, or at five o'clock p.m., June 15, 1954, depending upon whether said taxes were paid in installments and whether said installments were unpaid on the due dates; that upon being delinquent said taxes became subject to a penalty of fifteen per cent if unpaid after June 15, plus interest at the rate of six per cent per annum on said unpaid tax but not including the penalty from date of delinquency; that if said taxes became delinquent on February 15, a penalty of seven and one-half per cent was added to all tax delinquent until June 15, plus interest at six per cent on the unpaid taxes but not penalty, and after June 15 a penalty of fifteen per cent plus interest at six per cent on unpaid taxes not including penalty.

4. That thereafter and pursuant to the provisions of said Article 5, Chapter 8, of the Anchorage General Code, as amended, and pursuant to order of the Anchorage City Council adopted on the 19th day of November, 1954, directing the City Clerk-Treasurer of said City to publish the delinquent tax roll for the year 1954, as prepared by the City Assessor; that the "Anchorage Daily News" was designated a newspaper of general circulation in the City of Anchorage, and that publication therein was

directed once each week for five successive weeks beginning with the issue of November 30, 1954, and continuing through December 28, 1954; that pursuant to the order of the Anchorage City Council said publication was made on the said dates as appears by the affidavit made on behalf of said newspaper and attached hereto and filed herewith as Exhibit A; that said tax roll detailed as to whom the property was assessed, the year of delinquency, the property involved, the real property tax due and unpaid on each parcel of property, the penalty, interest and cost separately stated, due and unpaid and the total amount of the delinquency.

5. That a copy of said delinquent tax roll so published is filed herewith and is by reference incorporated in and made a part of this petition as Exhibit B.

6. That the said taxes on the property mentioned and described in the said delinquent tax roll (Exhibit B) has not yet been paid and the same is wholly due, owing, and unpaid to the City of Anchorage, together with penalty, interest, and costs as above mentioned.

Wherefore, the said City of Anchorage respectfully prays the Court to pass upon and determine the legality of said delinquent tax roll and of taxes on the property therein described or mentioned; and that the Court make an order directing the property described upon which the taxes have not been paid to be sold by the City of Anchorage to

satisfy and discharge the lien of taxes thereon, together with penalties aforesaid, interest, and costs, including the cost of this proceeding; and for other and further relief as to the Court may seem just and equitable.

Dated at Anchorage, Alaska, this 7 day of January, 1955.

/s/ B. W. BOEKE,
City Clerk-Treasurer,
City of Anchorage.

Duly verified.

EXHIBIT A

Affidavit of Publication

City of Anchorage—Notice of Tax Sale

The delinquent tax roll of real property for the year 1954 has been completed and is open for inspection at the office of the City Clerk-Treasurer, City Hall, Anchorage, Alaska.

The said delinquent tax roll will be presented in the District Court of the Third Division, Territory of Alaska, for judgment and order of sale on January 7, 1955, at ten o'clock in the forenoon or as soon thereafter as the matter can be heard.

The tract on said roll, the amount of unpaid tax, penalty and interest due thereon, and the name of person, or persons, or firm, or corporations, to whom such tax are assessed follow:

Alaska Railroad Terminal Yards Area

Name: Chugach Electric Association, Inc.

Description: Chugach Electric Association, Inc.,
portion of the power and electric generating
plant in the Alaska Railroad Terminal Yards
area located on the north bank of Ship Creek,
and also known to be located in the SW $\frac{1}{4}$ of
the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 7, T13, R3W, S.M.

Tax: \$38,314.00.

Penalty: \$5,747.10.

Interest: \$2,056.18.

Costs: \$60.00.

Total: \$46,177.28.

Delinquent Date: 2-15-54.

Certificate

I Hereby Certify that the foregoing is a true and
correct roll of the delinquent tax of Anchorage for
the year 1954, and that it shows the date when said
tax became delinquent, the total amount of said tax,
penalty and interest separately stated and the ag-
gregate of the whole thereof.

B. W. BOEKE,
City Clerk-Treasurer.

Publication Dates:

November 30, 1954.

December 7, 14, 21, and 28, 1954.

P. O. No. 4514—Nov.

P. O. No. 4515—Dec.

Territory of Alaska,
Third Judicial District—ss.

June Welling being first duly sworn on oath deposes and says that she is the Principal Clerk of the Anchorage News, a daily newspaper. That said newspaper has been approved as a legal newspaper by the Third Judicial Court, Anchorage, Alaska, and it is now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a true copy of a Notice of Tax Sale as it was published in regular issues (and not in supplemental form) of said newspaper for a period of five insertions, commencing on the 30th day of November, 1954, and ending on the 28th day of December, 1954, both dates inclusive, and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is the sum of \$75.00, which amount has been paid in full at the rate of \$1.00 per square for the first insertion and 75 cents per square for each subsequent insertion.

/s/ JUNE WELLING.

Subscribed and sworn to before me this 6 day of January, 1955.

[Seal]

REG. T. BOWKER,

Notary Public in and for the Territory of Alaska,
Third Division, Anchorage, Alaska.

My commission expires August 30, 1958.

EXHIBIT B

City of Anchorage Delinquent Real Tax Roll for
1953-1954, Alaska Railroad Terminal Yards Area

Name: Chugach Electric Association, Inc.

Description: Chugach Electric Association, Inc.,
portion of the power and electric generating
plant in the Alaska Railroad Terminal Yards
area located on the north bank of Ship Creek,
and also known to be located in the SW $\frac{1}{4}$ of
the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 7, T13, R3W,
S.M.

Tax: \$38,314.00.

Penalty: \$5,747.10.

Interest: \$2,056.18.

Costs: \$60.00.

Total: \$46,177.28.

Delinquent Date: 2-15-54.

Certificate as to Delinquent Tax Roll 1954

I, B. W. Boeke, City Clerk-Treasurer of the City
of Anchorage, Alaska, hereby certify that the above
roll is a true and correct roll of delinquent taxes of
the City of Anchorage, Alaska, for the year 1954.
That the preceding figures are given as of January
7, 1955.

Dated at Anchorage, Alaska, this 7 day of Janu-
ary, 1955.

/s/ B. W. BOEKE.

[Endorsed]: Filed January 7, 1955.

In the District Court for the Territory of Alaska,
Third Division, Anchorage, Alaska

No. A-10,396

In the matter of

THE DELINQUENT TAX ROLL OF THE
CITY OF ANCHORAGE FOR THE YEAR
1954

OBJECTION TO TAX AND PROPOSED
ORDER OF SALE

Chugach Electric Association, Inc., a non-profit co-operative corporation organized and existing by virtue of the laws of the Territory of Alaska, by Edgar Paul Boyko, its attorney, respectfully represents:

1. The Objector is a legal person having an equitable interest in a tract listed or alleged to be listed on the delinquent tax roll of real property for the year 1954, of the City of Anchorage, which is the subject matter of the above-entitled proceedings; and the Objector does hereby appear and present to this Honorable Court its objections to and contest of the validity of the tax on such property or the granting of an order of sale thereof. The grounds of the objection are as set forth below and the Objector hereby requests this Honorable Court to hear and determine these objections and to render such decision thereon as may be legal and just, pursuant to Article 7, Chapter 1, of Title 16 of the Alaska Compiled Laws Annotated, 1949.

2. The tract of land listed or claimed to be listed on said delinquent tax roll is part and parcel of certain lands owned by the United States of America and withdrawn from the public domain for and on behalf of the Alaska Railroad, an agency of the United States Department of the Interior, which said withdrawn lands are known as the Alaska Railroad Terminal Reserve, according to the official land records of the United States Land Office, at Anchorage, Alaska. Lands of the United States may not legally be made subject to taxation by the Territory of Alaska, or by any political subdivision thereof, including municipal corporations and, moreover, have been specifically exempted from such taxation by Chapter 10 of the Session Laws of Alaska, 1949, as amended, supplemented and re-enacted by Chapter 33 of the Session Laws of Alaska, 1953, and particularly Section 3 thereof.

3. Legal title to the tract and improvements listed or alleged to be listed on said delinquent tax roll and described on the published notice thereof as follows: "Chugach Electric Association, Inc., portion of the power and electric generating plant in the Alaska Railroad Terminal Yards located on the north bank of Ship Creek, and also known to be located in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 7, T. 13, R. 3 W., S. M." is vested in part, in the United States of America, acting through the Administrator of the Rural Electrification Administration, United States Department of Agriculture and, in the remaining part, in the Alaska Railroad,

an agency of the United States Department of the Interior and is therefore exempted from such taxation for the reasons set forth above.

4. Equitable title to the said tract and improvements listed or alleged to be listed on the said delinquent tax roll is vested, in part, in the Alaska Railroad, an agency of the United States Department of the Interior and, in the remaining part, in Chugach Electric Association, Inc., a local co-operative organization of borrowers through which loans have been made and are being made by the Rural Electrification Administration, United States Department of Agriculture and which is therefore an instrumentality of the United States Government, and the said tract is therefore exempt from taxation for the reasons stated above.

5. The Objector named herein, Chugach Electric Association, Inc., in whom equitable title to part of the improvements on this said tract is vested as aforesaid, is also specifically exempt from taxation by the City of Anchorage by virtue of the provisions of Section 6(b) of Chapter 10, Session Laws of Alaska, 1949, as amended, supplemented and reenacted by Section 3 of Chapter 33, Session Laws of Alaska, 1953.

6. The property described in the said published notice as "Chugach Electric Association, Inc., portion of the power and electric generating plant in the Alaska Railroad Terminal Yards Area located on the north bank of Ship Creek, etc.," is personal

property and not real property and is therefore not subject to these proceedings under the provisions of Article 7, Chapter 1, Title 16, ACLA, 1949, as will more fully appear from the public records of the Alaska Railroad, an agency of the United States of America, and particularly from the instrument known as Contract No. I-3 arr-8394.

7. The tract or property described above and alleged to have been listed on the delinquent tax roll of real property for the year 1954, of the City of Anchorage is not and has not been so listed and is not in fact a part of said delinquent tax roll, as will appear from the records and proceedings of this Honorable Court in the case entitled, "In the Matter of the Delinquent Tax Roll of the City of Anchorage for the Year 1954," Docket No. A-10,-396, and particularly from the completed delinquent tax roll filed therein and certified to by the City Clerk of the City of Anchorage on October 29, 1954, and from the final Judgment and Order of Sale, filed therein on the same date; and the present proceeding and proposed Order of Sale are, therefore, contrary to the applicable statutes as set forth in Article 7, Chapter 1, Title 16, ACLA, 1949, and are null and void.

8. The said tax on such property and the proposed Order of Sale thereof are objected to and their validity is hereby contested for such other and further reasons as may be stated at the time of the hearing hereof.

Wherefore, the Objector named herein respectfully prays that it be hence dismissed and that the City of Anchorage take nothing by its presentation and proposed order and that the Objector have such other and further relief as may be just and proper under the circumstances of this case.

/s/ EDGAR PAUL BOYKO,
Atty. for Objector, Chugach
Electric Association, Inc.

Certificate of service attached.

[Endorsed]: Filed January 7, 1955.

[Title of District Court and Cause.]

MOTION TO DISMISS

Chugach Electric Association, Inc., an Alaskan corporation and a party in interest herein, by Edgar Paul Boyko, its attorney, moves to dismiss the so-called Supplemental Petition for a Judgment and Order of Sale filed herein by the City of Anchorage, on the following grounds:

1. That this Honorable Court lacks jurisdiction to hear the same because the applicable statute under which this proceeding has been brought has not been complied with by the City of Anchorage in several respects, as more particularly set forth below.

2. That Article 7, Chapter 1, of Title 16 ACLA, 1949, does not authorize the filing of a supplemental

delinquent tax roll and that the delinquent tax roll of the City of Anchorage for the year 1954 has been filed heretofore and was certified to be complete and a final Judgment and Order of Sale was issued thereon on October 29, 1954, in case No. A-10,396; and the said case has been closed.

3. That the records of this case show that publication of the Notice of Tax Sale required by statute in this proceeding was not completed until on or after December 28, 1954; that said notice, as published, states that the delinquent tax roll, or "supplemental" delinquent tax roll which is the subject matter of this proceeding will be presented to the District Court for Judgment and Order of Sale on January 7, 1955; and said roll was in fact presented to this Honorable Court on said date; that the applicable statute and particularly Section 16-1-122, ACLA, 1949, requires that said roll shall be presented to the District Court for a Judgment and Order of Sale "on a certain day not less than thirty days after the completion of the publication"; that not more than ten days have elapsed between the date of completion of publication and the presentation of the roll to the Court on the date set forth in said notice; that for the reasons just stated, this Court lacks jurisdiction to proceed further in this case, at least until proper publication has been had and a proper date has been set for the presentation of the said roll.

4. That this motion is filed concurrently with and supplementary to the written Objection to Tax

and proposed Order of Sale filed herein on this day, for the purpose of enabling this Honorable Court to dispose of the issue of jurisdiction, as distinguished from the merits and points of substantive law raised in said objection.

/s/ EDGAR PAUL BOYKO,
Attorney for Chugach
Electric Association, Inc.

Certificate of service attached.

[Endorsed]: Filed January 8, 1955.

[Title of District Court and Cause.]

MOTION TO CONSOLIDATE
AND TO DISMISS

Chugach Electric Association, Inc., a co-operative corporation of the Territory of Alaska, by Edgar Paul Boyko, its attorney, respectfully represents as follows:

1. That it is a party in interest to each of the above-entitled causes now pending before this Honorable Court and that both of said causes involve a common question of law, which is the subject matter of the Motion to Dismiss hereto subjoined.

2. That the cause of efficiency, economy and good procedure would be served, and the time of the Court and of the parties litigant would be conserved, if the above-entitled causes were to be con-

solidated, at least for the purpose of the hearing on the respective Motions to Dismiss.

3. That the above-entitled causes, and each of them, should be dismissed because the petition upon which each is based fails to state a claim against Chugach Electric Association, Inc., upon which relief can be granted, and, specifically, because the said Chugach Electric Association, Inc., is expressly exempt from taxation by either the City of Anchorage or the Anchorage Independent School District, by virtue of the provisions of Section 6(b) of Chapter 10, Session Laws of Alaska, 1949, as amended, supplemented and re-enacted by Section 3 of Chapter 33, Session Laws of Alaska, 1953, and for other reasons to be stated at the hearing hereof.

Wherefore, Chugach Electric Association, Inc., respectfully moves this Honorable Court as follows:

(a) To consolidate the above-entitled causes for the purpose of hearing of the subjoined Motions to Dismiss, and for such other purpose or purposes as to this Honorable Court may appear proper and just.

(b) To dismiss the above-entitled causes, and each of them, on the grounds hereinabove stated.

/s/ EDGAR PAUL BOYKO,
Attorney for Chugach
Electric Association, Inc.

Notice

To: John L. Rader, Esq., City Hall, Anchorage, Alaska, and E. L. Arnell, Esq., Turnagain Arms Apartments, Anchorage, Alaska, Attorneys for the above-named Petitioners.

Please take notice that the undersigned will bring the within Motion for consolidation and to dismiss on to hearing before the Honorable J. L. McCarrey, Jr., District Judge, in the District Courtroom, Federal Building, Anchorage, Alaska, on Tuesday, August, 2, 1955, at 3:00 o'clock in the afternoon of said day, or as soon thereafter as counsel may be heard.

Said motion will be made and heard upon this Notice and upon the pleadings, papers, records and files in the above-entitled causes.

/s/ EDGAR PAUL BOYKO,
Attorney for Chugach
Electric Association, Inc.

Certificate of service attached.

[Endorsed]: Filed July 5, 1955.

[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

M.O. CONSOLIDATION FOR PURPOSES OF
ARGUMENT ON MOTION TO DISMISS
ONLY

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarry Jr., District Judge, the following proceedings were had to wit:

Now at this time upon motion of Edgar P. Boyko, counsel for Chugach Electric Co., John L. Rader, for and in behalf of the City of Anchorage and Edward L. Arnell for and in behalf of the Anchorage Independent School District, not objecting,

It is ordered that causes No. A10,396, entitled In the Matter of the Delinquent Tax Roll of the City of Anchorage for the Year 1954, and No. A-11,097, entitled In the Matter of the Application of the Anchorage Independent School District for an Order Directing Sale of all Properties Listed in the Delinquent Tax Roll of Said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955, said Roll being known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955, be and they are hereby consolidated for purposes of arguments on motion to dismiss as to Chugach Electric Association only.

Entered September 1, 1955.

In the District Court for the District
of Alaska, Third Division

No. A-10,396

In the Matter of

The Delinquent Tax Roll of the City of Anchorage for the Year 1954.

No. A-11,097

In the Matter of

The Application of the Anchorage Independent School District for an Order Directing Sale of All Properties Listed in the Delinquent Tax Roll of Said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955; Said Roll Being Known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955.

(Consolidated)

OPINION

John Rader for the Petitioner City of Anchorage;
E. L. Arnell for the Petitioner Anchorage Independent School District; Edgar P. Boyko for Chugach Electric Association, Inc., taxpayer.

These two cases have been consolidated because of a common question of law for the sole purpose of determining a motion to dismiss.

The City of Anchorage, a municipal corporation, in cause No. A-10,396, petitioned the court to foreclose its tax lien for the year 1954, and the Anchorage Independent School District, in cause No. A-11,097, petitioned the court to foreclose its tax liens for the years 1951-1952, 1952-1953, 1953-1954, 1954-1955.

The Chugach Electric Association, Inc., is an Alaskan non-profit co-operative association, organized for the purpose of participating as a co-operative under the Rural Electrification Administration Act of 1936, as amended. (7 USCA 901, et seq.)

While the Chugach Electric Association, Inc., supplies electricity and electrical service to rural areas on monies borrowed from the Rural Electrification Administration, the generating plant itself and accompanying facilities are located inside the corporate limits of the City of Anchorage, and were constructed upon leased ground, within the yards of the Alaska Railroad, in a joint participation undertaking with the Alaska Railroad. The latter is a government-owned railroad that operates under the direction and by virtue of congressional authority granted to the Department of the Interior. (48 USCA 301, et seq.)

A portion of the electricity used by the co-operative is generated within the yards of the Alaska Railroad (*supra*) and is transmitted over lines into the rural areas served by the co-operative. The gen-

erating plant of the co-operative, and a portion of the co-operative transmission lines are likewise located within the boundaries of the Anchorage School District.

In the motion to dismiss, the movant taxpayer, Chugach Electric Association, Inc., originally based its motion upon several procedural defects, and other grounds hereinafter designated. However, these alleged procedural defects have now been waived upon stipulation by the co-operative.

The remaining grounds upon which the motion to dismiss is based are as follows: (1) The co-operative is a governmental instrumentality and, therefore, is not taxable; (2) Its property is located wholly within the Alaska Railroad Reserve with title being in the Government and, therefore, is not taxable; (3) The co-operative has been granted specific immunity from taxation by the Territorial Legislature.

Only point number 3 will be considered, since a favorable determination for the movant on any one of the three points would be controlling.

In 1949, the Territorial Legislature passed an act entitled "Alaska Property Tax Act" and provided, among others, the following exemptions: "The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangements with the Rural Electrification Adminis-

tration, shall be exempt hereunder." (Emphasis supplied.) (Chap. 10, Session Laws of Alaska, 1949, Sec. 6(b).)

In 1953, the legislature repealed the "Alaska Property Tax Act." (Chap. 22, Session Laws of Alaska, 1953.)

The same legislature passed a tax act "authorizing and empowering cities, municipalities, school districts, public utility districts and other taxing units to classify property for the purpose of taxation and authorizing the granting of exemptions to certain classes of property; making exemptions granted and classifications made under Chapter 10, Session Laws of Alaska, 1949, binding upon such taxing units and declaring an emergency." (Emphasis supplied.) (See introductory clause, Chapter 33, Session Laws of Alaska, 1953.)

Section 3 of the same act passed by the 1953 legislature concerning taxation provides as follows: "All exemptions granted in whole or in part, and all classifications heretofore made under the provisions of Section 6, Chap. 10, Session Laws of Alaska, 1949, shall remain in full force and effect upon the terms and for the periods granted, and shall be binding upon the Territory, and all cities, municipalities, school districts, public utility districts and other taxing units in which the property which is the subject of classification or exemption is situated, and the exemptions granted or classifications so made shall apply to all taxes levied and as-

sessed by the city, municipality, school district, public utility district or other taxing units where the property is situated, as fully as though they had been granted or made under the provisions of this act. The purpose and intent of this section is to carry into practical effect all classifications made and exemptions granted under the provisions of Chap. 10, Session Laws of Alaska, 1949." (Emphasis supplied.)

"All acts and parts of acts in conflict herewith are hereby repealed to the extent of the conflict." (See Sections 3 and 5, Chap. 33, Session Laws of Alaska, 1953.)

The City of Anchorage opposes point number 3 principally on the basis of:

- a. Statutory construction;
- b. The exemption claimed is in violation of the Territorial Organic Act;
- c. The exemption purportedly granted to an association "* * * under arrangement with the Rural Electrification Administration * * *" is invalid.

The Anchorage Independent School District opposes the same point upon the bases of:

- a. Statutory construction;
- b. Legislative intent;
- c. The claimed exemptions would not apply to a tax not asserted.

Prior to the Alaska Property Tax Act, the Independent School District of the Territory of Alaska levied and collected taxes under legislative

authorization set forth in 37-3-23 ACLA, 1949, and 37-3-53, which, among other things, denominated exemptions of the school tax, while the municipalities levied and collected taxes and gave exemptions through the legislative authorization of 16-1-35(g), as amended, and 16-4-1 ACLA, 1949.

The Alaska Property Tax Act of 1949 (*supra*) purports to be a general codification of the tax law in the Territory of Alaska and clearly enumerates the exemptions (*supra*). I do not believe that the word "codification" can be considered as being used in a "strained" sense, for, in Section 3, the law states: "* * * there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory * * *" (Emphasis supplied.) Then in Section 4 of the Act is found this language: "The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district * * *" and "All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows: * * *" (Emphasis supplied.)

Counsel for the petitioners have urged upon the court the theory that the legislature did not intend, by Chapter 10 of the 1949 Session Laws, to limit the general taxing power of the municipalities,

school districts, etc. Their arguments fall under their own weight since it cannot be said that the legislature intended that the 1% authorized by this act would be in addition to that authorized to the municipalities and independent school districts enumerated above. Thus, the only reasonable interpretation which one can give to the intent of the legislature in passing Chapter 10 of the 1949 Session Laws is that it intended to codify, so to speak, all of the basic taxing laws into one general act, which they named the "Alaska Property Tax Act," wherein they granted certain exemptions. To give any other interpretation would result in the property of an association "* * * operating utilities under arrangement with the Rural Electrification Administration * * *" being taxed by the Territory of Alaska outside of any municipality, independent school district, incorporated school district or public utility district; yet, at the same time, such an "association" could not be taxed within the boundaries of the foregoing taxing entities.

It is true that the statutes under which taxes are levied and collected by the municipalities and the school districts here in the Territory of Alaska are not referred to specifically by a cross reference. However, when all of the acts are viewed as a whole and construed together, the legislature's intent is clear.

I am of the opinion that Chap. 10 of the Session Laws of Alaska, 1949, is legislation passed under the board, general taxing powers of the sovereignty

of the Territory of Alaska, and while I find that the exception given to associations operating utilities under an arrangement with the R. E. A. is somewhat broad, loose, and a general term not readily or easily defined, I find that this exemption does apply to the movant, Chugach Electric Association, Inc.

Counsel for the petitioner, City of Anchorage, urges that since the Rural Electrification Administration is not limited under the federal law creating it to “* * * the lending of funds to co-operatives,” such an exemption as provided in the laws of the Territory of Alaska could not “* * * be applied with fairness because of the indefiniteness of the term.” (See City petitioner’s brief under Section 4 at page 8.) I cannot accept this as a logical argument for the reason that the tax exemption being considered in this case is limited to those associations which operate “utilities” under an “arrangement” with the R. E. A.; hence, the possible vested authority of R. E. A. to perform another function other than to supply utilities is immaterial in the final analysis and determination of the case before the court.

I find such a classification of the property exempt under the law here in question to be a reasonable one, and should the municipalities, independent school districts, etc., of the Territory of Alaska be aggrieved by such a law covering this exemption, their recourse is with the legislature.

The petitioners make much of the case of the Inter-City Rural Electric Co-operative Corporation vs. Reeves, Commissioner of Revenue, et al., Court of Appeals, Kentucky, 1943, 171 SW 2d, 978, in which case the court held that an exemption under the Kentucky Constitution which required “* * * and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws,” was held to be unconstitutional. I am not greatly moved by this argument for the reason that the Alaska Organic Act requires only that “* * * all taxes shall be uniform upon the same class of subjects” (supra). A comparison of the two acts distinguishes the applicability of the petitioners’ argument, since the constitutional requirements are different. I am of the opinion that the requirement of the Kentucky Constitution in determining the constitutionality of a tax law is that the tax must be assessed uniformly on the same class of property, and, therefore, the only way the property could be exempt would be if the co-operative were considered to own public property, which it is obvious that it did not and, thus, they were liable for taxes. In the Organic Act requirement of the Territory of Alaska is the provision that all persons of a certain class must be treated uniformly. In the case before the court, in referring to “the same class of subjects” (supra), the language of the exemption statute reads: “* * * arrangement with the Rural Electrification Administration * * *” (supra). The choice of this language

is unfortunate; however, it would appear to be a reasonable classification; thus, all co-operatives having "arrangements" with the Rural Electrification Administration must be treated alike.

The petitioners argue in their briefs that it is " * * * a fundamental rule of statutory construction that any enactment must be construed in its entirety, and that any purpose or intent of the legislature must be extracted from all of the provisions, rather than from a single, isolated section." (Page 5 of School District brief.) This I accept as a legal, cardinal principle of statutory construction. (*U. S. vs. Alpers* (1950), 338 US 680; *Great Northern Rail. Co. vs. U. S.* (1942), 315 US 262.)

Points of law which I have considered in the determination of this problem are: There is a presumption against the surrender of taxing power (51 Am Jur 526 at p. 529); therefore, the party claiming the exemption has the burden of proof (51 Am Jur 527 at p. 530), and the existence of a well-founded doubt of an exemption is fatal. (*Bank of Commerce vs. Tennessee*, 161 US 134.) It is also a general principle of law that a statute concerning a municipality (*City of Miami vs. Kayfetz*, 30 So. 2d 521; *Fisher vs. City of Pittsburgh*, 112 Atl. 2d 814) and a school district (*Madison County vs. School District #2*, 27 NW 2d 172) must be strictly construed, since they are both governmental subdivisions.

In conclusion, I find no well-founded doubt in this case. The legislature has granted an exemption

to co-operatives operating utilities under "arrangement" with the R. E. A. As previously discussed, this exemption is not expressed in as clear language as could be desired. However, I find that the legislature did intend such an exemption and it is obvious that none but co-operatives such as the Chugach Electric Association, Inc., and other co-operatives in a like position as Chugach Electric Association, Inc., could qualify.

The difficulty of the interpretation of the tax problem and the applicability of the exemption herein presented to the taxpayer and the courts is a classic example of the ever-increasing and growing need for the legislature to pass legislation creating better taxation laws.

As heretofore orally announced in open court, the motion to dismiss as to the Chugach Electric Association, Inc., is hereby granted.

Dated at Anchorage, Alaska, this 8th day of May, 1956.

/s/ J. L. McCARREY, JR.,
U. S. District Judge.

Received May 9, 1956.

[Endorsed]: Filed May 9, 1956.

In the District Court for the District of Alaska,
Third Division

Nos. A-10,369 and A-11,097

In the Matter of:

The Delinquent Tax Roll of the City of Anchorage
for the year 1954.

In the Matter of:

The Application of the Anchorage Independent
School District for an Order Directing Sale
of All Properties Listed in the Delinquent Tax
Roll of Said District for the Fiscal Years
1951-1952, 1952-1953, 1953-1954, 1954-1955; Said
Roll Being Known as the Delinquent Tax Roll
of the Anchorage Independent School District
for the Year 1955.

JUDGMENT OF DISMISSAL

This matter having come before the Court upon the motion to consolidate and dismiss filed by the Chugach Electric Association, Inc., in the above-entitled proceeding, and this Court having heard oral argument by counsel for the respective parties, upon each and all of the grounds stated in said motion to dismiss, and this Court also having considered the written briefs filed by the respective parties through their counsel, in compliance with orders of this Court, and this Court being fully advised in the premises, does hereby find that said motion should be granted and said petitions and

each of them dismissed, upon the grounds and for the reasons set forth in an Opinion filed in the above-entitled proceeding on May 9, 1956;

Wherefore, It Is Ordered, Adjudged and Decreed:

1. That the Petition of the City of Anchorage, entitled, "In the Matter of the Delinquent Tax Roll of the City of Anchorage for the year 1954" being Cause No. A-10,369, be, and the same hereby is, dismissed, with prejudice, as to Chugach Electric Association, Inc.

2. That the Petition of the Anchorage Independent School District, entitled, "In the Matter of the Application of the Anchorage Independent School District for an Order Directing Sale of All Properties Listed in the Delinquent Tax Roll of said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955. Said Roll Being Known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955," being Cause No. A-11,097, be, and the same hereby is, dismissed, with prejudice, as to Chugach Electric Association, Inc.

3. That Chugach Electric Association, Inc., have and recover of the said petitioners its costs of these proceedings including an attorney's fee of Two Hundred Fifty Dollars (\$250.00).

Made and Ordered Entered at Anchorage, Alaska, this 12th day of June, 1956, at the hour of 10:14 a.m.

/s/ JOHN L. McCARREY, JR.,
Judge of the District Court.

Approved as to form:

/s/ LYNN W. KIRKLAND,
Attorney for City of
Anchorage.

/s/ E. L. ARNELL,
Attorney for Anchorage In-
dependent School District.

Received June 11, 1956.

Entered June 12, 1956.

[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

NOTICE OF APPEAL

To the Clerk of the District Court, Third Division,
District of Alaska:

Sir:

Notice is hereby given that the City of Anchorage, petitioner above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the District Court for the Third Division, District of Alaska, dismissing with prejudice as prayed for by Chugach Electric Association, Inc., the petition of the City of Anchorage for an order directing sale of real property listed in the delinquent tax roll for the City of Anchorage

for the year 1954, which order of dismissal was entered in No. A-10,396 on June 12, 1956.

/s/ JAMES M. FITZGERALD,
Attorney for the Petitioner,
City of Anchorage.

Received July 3, 1956.

[Endorsed]: Filed July 3, 1956.

[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

(Consolidated)

APPELLANT'S STATEMENT OF POINTS

The points upon which the appellant, City of Anchorage, will rely upon appeal are:

1. The District Court erred in dismissing the Supplemental Petition of the City of Anchorage.
2. The District Court erred in assuming that Chugach Electric Association is within the exemption provided under the Alaska Property Tax Act of 1949, as amended by Chapter 22, Session Laws of Alaska, 1953.
3. The District Court erred in finding that the Chugach Electric Association has been granted specific immunity from all municipal taxation by the Territorial Legislature.

4. The District Court erred in finding that the Alaska Property Tax of 1949 was a general codification under the taxing laws of the Territory of Alaska.

5. The District Court erred in finding that the Alaska Property Tax Act of 1949 restricted the taxing power of a municipality under other acts or statutes of the Territory of Alaska.

6. The District Court erred in finding that the classification exempting the property of associations operating utilities under arrangements with Rural Electrification Administration was a reasonable one.

/s/ JAMES M. FITZGERALD,
Attorney for Appellant,
City of Anchorage.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 6, 1956.

[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

CLERK'S CERTIFICATE—ORIGINAL
RECORD

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that pursuant to Rule 10(1) of the United States Court of Appeals, Ninth Circuit, and of Rules 75(g)(o) of the Federal Rules of Civil Procedure, and of the designations of coun-

sel in causes Nos. A-10,396 and A-11,097, consolidated, I am transmitting herewith in separate volumes the Original Papers in my office dealing with the above-entitled actions or proceedings.

The papers herewith transmitted constitute the record on appeal in said actions from the judgment filed and entered in the above-entitled actions by the above-entitled Court on June 12, 1956, to the United States Court of Appeals, Ninth Circuit, San Francisco, California.

Dated at Anchorage, Alaska, this 9th day of August, 1956.

/s/ WM. A. HILTON,
Clerk.

cc: Mr. James M. Fitzgerald,
Attorney, City of Anchorage,
Anchorage, Alaska.

Mr. E. L. Arnell,
Attorney at Law,
Anchorage, Alaska.

[Endorsed]: No. 15231. United States Court of Appeals for the Ninth Circuit. City of Anchorage, a Municipal Corporation, Appellant, vs. Chugach Electric Association, Inc., Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed August 11, 1956.

Docketed: August 16, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals,
Ninth Circuit

No. 15231

In the Matter of

The Delinquent Tax Roll of the City of Anchorage
for the Year 1954.

No. 15232

In the Matter of

The Delinquent Tax Roll of the Anchorage Inde-
pendent School District for the Year 1955.

STIPULATION

Whereas, each of the above-entitled proceedings involves substantially the same issues of law and are based upon the same opinion rendered by Judge J. L. McCarrey, Jr., Judge of the District Court for the District of Alaska, Third Division, Territory of Alaska, and

Whereas, counsel for the respective parties deem the consolidation of said appeals to be advantageous to the various parties;

Now, Therefore, It Is Stipulated, by the undersigned that the above-entitled proceedings, No. 15231 and No. 15232, now pending before the above-entitled court, may, by order of said court, be consolidated for all purposes, by the entry of any Order of Consolidation which the court deems appropriate.

Dated at Anchorage, Alaska this 5th day of Sept., 1956.

/s/ E. L. ARNELL,

Attorney for Appellant, Anchorage Independent School District.

/s/ JAMES M. FITZGERALD,

Attorney for Appellant, City of Anchorage, Anchorage, Alaska.

/s/ EDGAR PAUL BOYKO,

Attorney for Appellee.

So Ordered.

/s/ WILLIAM DENMAN,

Chief Judge;

/s/ ALBERT LEE STEPHENS,

/s/ H. T. BONE,

United States Circuit Judges.

[Endorsed]: Filed September 7, 1956.

